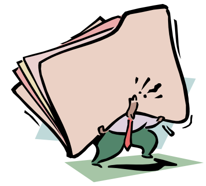
CHAPTER VI.
ECONOMIC DEVELOPMENT



The 1983 Amendments to the Community Development Act of 1974 created a new eligible activity: that of economic development assistance. Congress hesitated initially to allow the use of the CDBG funds to benefit for-profit businesses. They continue to be very concerned and require that HUD monitor very carefully all economic development projects, particularly those using the funds to capitalize revolving loans. Compliance with all program requirements is absolutely mandatory so that we can ensure the continued use of funds for economic development purposes into the future. The law states that funds may be used for economic development purposes when it is part of a comprehensive economic development project. This is defined in the Utah program as a multi-faceted effort including but not limited to a planning component leading to implementation through technical and financial assistance to business. The overriding intent of these activities is to provide employment opportunities, primarily for LMI persons.

A. GOALS & OBJECTIVES

The goal for the expenditure of public funds to benefit private, for-profit and non-profit interests is to provide a favorable climate in which existing business and industry can be maintained and, if possible, expand and to help provide a quality life style within communities which will attract new business and industry to all areas of the state. A secondary goal that applies directly to the CDBG program is to revitalize downtown commercial centers for economic stabilization. These goals are established with the intention of sustaining or creating permanent jobs, primarily for LMI persons.

In order to accomplish these goals, the state has established the following objectives:

- Improve local capacity for economic development through comprehensive planning and leadership development.

- Encourage and train applicants in the use of CDBG funds for innovative business financing alternatives;

- Coordinate directly with on-going economic development and job training efforts at the state and local level;

- Stimulate private investment through the use of CDBG funds;

- Improve the local tax base through expansion of business so that reinvestment in capital improvements can be made, further improving the potential for general business expansion;

♦ Improvement of the appearance and quality of life within communities making them more attractive to existing residents as well as potential outside business interests; and

♦ Take full advantage of the flexibility the CDBG funds allow in the use of the money for economic development purposes.

B. NATIONAL OBJECTIVE COMPLIANCE

The cognizant federal act and the regulations contained in 24 CFR, part 570, clearly require national objective compliance for all economic development projects. Basically, economic development must qualify under one of two primary national objectives:

1. Benefit to Low to Moderate Income (LMI) persons

2. Aiding in the Prevention or Elimination of Slums or Blight

The national intent for the expenditure of public funds for private business assistance is to stimulate its creation or expansion and create or maintain jobs for LMI persons.

1. Benefit To LMI Compliance

(a) The most important and simple way to qualify a project under this national objective is to create jobs that are made available to LMI persons. Job availability means that the "nature and extent of skills, education and experience required to qualify for the job" are consistent with those attributes possessed by LMI persons or that training will be provided to upgrade the skills of LMI persons so that they can qualify. Those persons actually hired must complete an "income certification form" showing family income at the time of hire to verify income status. The grantee must require loan recipients to evaluate its real employment needs. The recipient must then use real job needs as its employment commitment. This commitment must be made by contract before any funds are drawn down. At least 51 percent of all jobs created must be taken by LMI persons in order to meet the national objective.

(b) CDBG assistance may also be given to a project where training is made available to LMI persons to help them qualify for higher skilled employment. We encourage coordination with all job-training programs (Workforce Investment Act – WIA, etc.). All other above referenced conditions apply. Income certification forms are simplified if WIA funds are involved.

(c) Economic Development projects can qualify if the project itself is physically located within or adjacent to areas where "substantial numbers of LMI persons reside." The accessibility of LMI persons to the job site make this kind of project eligible. However, highly skilled jobs made available in a low-income area, for which LMI persons could not qualify, will not accomplish the goals of the program. The state will determine the definition of "substantial," in the context of area definitions, on a case-by-case basis.

(d) Advertising and recruitment efforts designed to make LMI persons aware of employment opportunities are eligible costs and should be a part of any effort to meet the national objective.

2. Aiding In The Prevention or Elimination of Slum and Blight

Applying for economic development projects under the second national objective, "aiding in the prevention or elimination of slum and blight," is much more complicated. The application process is the same as that listed in Chapter IV, Section B-2. The applicant must declare by resolution that an area of the community is slum and blighted and meets the characteristics of slum and blight as defined herein.

Primarily, the area must have a substantial number of at least two different types of dilapidated structures or improvements exhibit one of the ten (10) conditions listed in the criteria and meet all of the other listed requirements. The scope of work in the application must specifically address all conditions of slum and blight identified in the resolution and the condition statement.

Individual structures outside a slum and blighted area may be rehabilitated if the intent is to do an eligible activity. To qualify the "spot", the specific location of the structure or improvement must be defined in the scope of work with enough information to show how the problem will be solved and aid in preventing slum and blighted conditions through the expenditure of CDBG funds.

C. ELIGIBILITY

All cities, counties and associations of government, normally eligible to apply for funding in the Small Cities program may apply for economic development assistance including infrastructure support (water, sewer, streets etc.), planning and business development technical assistance. Because administration of a revolving loan program is administratively intensive, only Associations of Government and urban counties (Davis, Utah and Weber Counties) with available professional staffs are eligible to apply for and administer a revolving loan project. All other entities should have one of these entities apply for and administer the loan program in their behalf.

1. PLANNING

Before an entity can effectively utilize an economic development revolving loan, the state recognizes that it is essential to do extensive preparatory planning. CDBG funds may be used for planning activities up to a maximum of two contract years (30 months considering contract overlap). It is hoped that after that time the organization will be firmly established and funding needs for staff and other administration will come from local sources. CDBG funds can then be used for technical assistance for business development and other implementation efforts where job creation can occur.

CDBG funds may be used for the following planning items categorized into eight steps usually followed in creating an economic development program:

a. Assessment of the employment needs of the local labor force, especially the LMI persons. This should include an evaluation of population, wages, unemployment/underemployment, income, workforce characteristics, education characteristics, training opportunities, etc.

b. Analysis of local economic base:

- ♦ Status of business and industry currently located in the area including all sectors of the economy.

- ♦ Decline or growth trends of business by sector. What is really going on with the economy of the area?

- ♦ Evaluate opportunities for growth and expansion within the local economy.

- ♦ Prepare a detailed market analysis of existing or related businesses in the area or of targeted industries outside of the area.

c. Analysis of local economic development support base including capacity, location and age of infrastructure and quality of life indicators.

d. Development of an economic development organization which includes staff, boards, committees, training, bylaws, criteria, etc.

e. Prepare an Economic Development Strategy/Plan, which is based on the information developed in the analysis steps. Funds may be used to prepare target industry studies; existing industry or business expansion inventories, value-added spin-off business or business start up efforts. There are many strategies, which can be developed but must be based on thorough data analysis. Prepare a detailed goal and policy statement with milestones and evaluation criteria as part of the overall strategy.

f. Evaluate Financial Resources:

- ♦ Private Financing (local and statewide banks, CDC's, venture capital, etc.)
- ♦ Public Financing (local, state and federal sources including enterprise zones, CDBG, EDA, SBA, Farmers Home, etc.)
- ♦ Other: i.e. training through WIA, utilities, foundations, etc.

g. Prepare marketing and promotional information to support the overall strategy. The kinds of information produced should include data on the area and programs/services offered. Promotional efforts should be targeted and can only be done as part of an overall economic development effort. <u>Promotional activities alone are not eligible</u>.

h. Develop an evaluation methodology so that, at predetermined times, grantees can determine if programs are working and make changes which will make the program more effective.

Most of the Associations of Government serve as regional economic development planning units. All rural AOG's prepare yearly regional Comprehensive Economic Development Strategies (CEDS), which outline the regions' economic development strategies and direction. Relevant sections of these plans may form the basis for CDBG based community economic development plans as applicable.

2. TECHNICAL ASSISTANCE

As part of the implementation of planning and in addition to direct financial assistance, grantees may also expend funds to provide technical assistance to business.

Definition:

♦ **Technical Assistance (TA):** TA can be defined assistance to companies to help them to locate in the community or expand if they are already in the area. Even though a grantee might decide not to develop and maintain a revolving loan program, after completing their economic development planning, they can still receive CDBG funds to do technical assistance.

All technical assistance grants must meet a national objective.

3. REVOLVING LOAN ASSISTANCE

To further implement an economic development program, urban counties and associations of governments may apply for program funds to capitalize revolving loan projects. This assistance can only be provided as part of an overall economic development program as defined in this chapter. It is required that 51 percent of all jobs created through each individual loan be made available to LMI persons.

Primarily, there are five different ways CDBG funds may be used in an economic development revolving loan program. Any other uses must be approved by the state prior to making any commitment to an applying business.

♦ **Blending**: Funds may be used to make a conventional loan more obtainable to a prospective company. Normally, CDBG funds are loaned to businesses at competitive rates compared to the market.

♦ **Buy Downs:** Funds can be used to directly subsidize the interest rate charged by commercial lenders on loans. A net rate reduction is realized by the recipient thereby making the loan serviceable.

♦ **Guarantees**: A lump sum allotment can be pledged against possible default on a conventional loan. The loan is then easier to obtain. The state in effect will hold the funds in escrow. They cannot be held by the bank in a lump sum dispersal.

♦ **Grants**: Under certain limited instances grants may be made directly to businesses with no pay back required such as when granted in combination with private funds at ratios similar to conventional loans. There are very few instances though, when grants are warranted. These should only be made when there are no other alternatives and there are significant public benefits to be derived.

♦ **Refinance of Existing Debt -** If a company has an existing debt, which has prohibitive interest rates to the point where it has limited cash and cannot grow or maintain existing markets, it is possible to use CDBG funds to refinance the debt to improve the company's profitability.

4. OTHER ELIGIBLE ACTIVITIES

The Community Development Block Grant program allows the expenditure of funds to accomplish a broad variety of other projects under guidance of Section 105 of the act based on the ultimate creation of jobs for low and moderate-income persons. Examples of these kinds of eligible activities include:

- Acquisition of real property,
- Construction,
- Rehabilitation,
- Installation or expansion of commercial or industrial facilities, including:
- Water and/or sewer lines, historic preservation, street improvements, storm sewers,
- Flood drainage facilities, access roads, railroad spurs, pedestrian malls and walkways,
- Any other eligible activity listed in this section

Each grantee must ensure that the businesses that benefit from the provision of these facilities will ensure that 51 percent of all jobs created are made available to low or moderate-income persons. This is done by various methods including: a conditional use permit attached to land use or building permit ordinance approval; contract stipulation, if a contract exists; and formal monitoring for those businesses who only hire low or moderate income persons just by the nature of the jobs themselves.

D. GENERAL APPLICATION PROCEDURES

Each regional planning agency in the state has a dual role in the use of CDBG funds for economic development. Applicants fill out and submit an application. Then, each AOG will conduct its rating and ranking process through their Regional Review Committee. An applicant submits its application to the AOG; and then sent to the Regional Review

Committee along with all other applications. Depending upon the region, economic development applications may be rated and ranked only with other E.D. applications and funded out of an E.D. set-aside. In other systems applications are prioritized through the rating and ranking system and compete with all other applications regardless of type.

CDBG applicants may apply through their region for an economic development project. Each applicant must determine or demonstrate the following:

1. National Objective compliance. The supporting data must show how the project will comply with national objective requirements.

2. The project activity is eligible according to Section 105 in Title I of the Act.

3. It has the capability to either: (1) administer the grant; (2) establish a new organization for economic development; or (3) enter into a cooperative agreement with a separate agency. The above alternative agencies must possess the following:

> **a.** Experienced administrative staff in place with knowledge of the program;
>
> **b.** Capability to prepare an economic development plan with an implementation process; and
>
> **c.** Knowledge of economic development techniques and the CDBG program.

4. Supporting Information:

> **a.** Percent of LMI persons in a city/county or within a targeted redevelopment area;
>
> **b.** The number of jobs which will be retained or created by the project; and
>
> **c.** Percent of unemployment in the jurisdiction.

5. A detailed scope of work that includes the preparation of an economic development program with a specific implementation statement. The development of this program can stand alone as an eligible CDBG activity.

6. If an urban county or an AOG is going to administer a revolving loan program, it must prepare detailed selection criteria. It is through this mechanism that loan recipients are screened and selected. Some general guidance is provided that pertains to the content of these criteria.

E. FLOAT FINANCING

The state of Utah maintains a significant balance of CDBG funds in its line of credit with the Department of Housing and Urban Development. These funds are under contract to sub-state grantees. However, because of delays in the commencement and completion of projects most of the funds are not drawn down by the state from the federal government for extended periods of time.

In order to maximize the use of all CDBG funds HCD reserves the right to allocate these funds to eligible grantees for large scale, short term financing of eligible economic development.

Applications for "interim" funding will be processed and funded on a first come, first served basis after all CDBG requirements have been met. Primarily the project must provide direct benefit to low and moderate-income persons, see section B. Other national objectives may be used but are secondary to the primary objective. Projects must also be eligible under the law. Private for-profit entities must demonstrate that the project will be unable to proceed in completing the finance package without the participation of the CDBG funds. Private sources for funding must be exhausted and CDBG funds should be considered "Gap Funding" only.

Program income derived from interim loans will be allocated to the special emergency fund (see Chapter II, E). HUD program income laws prohibit the state retaining the actual funds therefore the interest funds will immediately be spent. The interest will be credited to the top of the state allocation in the next funding cycle. Reasonable administrative funds may be taken out of program income funds by the state.

Because the availability of funds for primary contract use depends on the re-payment of funds by the interim user, there is some risk to the primary contract users. This risk will be minimized by the mandatory use of an irrevocable and unconditional letter of credit from a recognized financial institution acceptable to the state of Utah by the loan recipient. In August 2000 the Policy Committee approved the use of federal guarantees, such as USDA when available, to secure interim loans in addition to the letter of credit. The CDBG Policy Committee may also accept a "standby bond purchase agreement," also from recognized financial institutions acceptable to the state of Utah. This option is only acceptable when the project is construction based and where the local government entity issues general obligation or revenue bonds to help finance the project.

The Code of Federal Regulations (CFR) Part 24 570.301 limits the term of these contracts to 2.5 years but allows annual extensions. The state of Utah allows an initial term of two years with a maximum of five annual extensions.

There must be at least twice the loan amount available of unexpended funds in the state line of credit with HUD. **Total loans made by the state will not exceed one half of the most recent year's CDBG allocation.** These projects must be consistent with all state and federal rules and regulations under the CDBG program. In order to justify the expenditure of these funds on an interim basis, a <u>significant public benefit</u> must be derived.

The application and contractual process will begin with initial consultation with the state CDBG staff, where the details of the project, as available, will be discussed. The state will provide direction on how to proceed.

1. Application and Contract Process

It is the policy of the state of Utah CDBG Policy Committee that approved interim loans will have a limit of one year between the dates the loan request is conditionally approved and the loan contract is executed. If a contract is not executed within this time frame, the applicant must submit a new application.

An application must be submitted directly to the state for consideration. The normal application form for the year in which the application is made must be used. A copy of the application must also be submitted to the Regional Review Commission for its consideration and final disposition. In addition to all normal application information it will be necessary to submit and receive the following items.

a. A detailed project description showing compliance with "benefit to LMI persons." The description should include location, principal persons and companies involved, time frames, objectives, type of assistance intended, costs and an itemized list of exactly what will be done with the funds.

b. Description of the significant public purpose to be accomplished by the project.

c. Private and other public financial commitment, as applicable.

d. Demonstrated need for the assistance including a financial review of the recipient.

e. Size, scope and degree of risk in the project for the state and grantee.

f. A permanent financing plan. This plan will illustrate how the applicant plans to obtain permanent financing that must be in place at the conclusion of the contract term. A proposed time frame, with milestones by which progress may be evaluated, must be part of the plan.

g. Availability of an irrevocable and unconditional letter of credit. The financial institution that will be issuing the letter of credit must be identified and documentation submitted that the institution is capable and willing to issue the letter of credit.

h. Final approval of the application by the state CDBG Policy Committee.

i. Execution of a contract between the state and the grantee.

j. State approval before execution of all subsequent contracts or loan agreements between the grantee and contractor or loan recipient, which include all contract conditions and terms.

k. Receipt and approval of a letter of credit by the state from the grantee.

l. Execution of all loan agreements or contracts.

2. For-Profit Assistance

In the event the interim financing assistance is to be provided to a private, for-profit entity, an "appropriate" statement must be prepared demonstrating the inability of the private entity to get private financing. In order to carry out an economic development project this must be accepted by the state before any funds are transferred.

F. REQUIREMENTS FOR THE USE OF CDBG FUNDS FOR REVOLVING LOAN FUNDS

A targeted system for using CDBG funds to benefit low and moderate-income persons is achieved by providing LMI persons training and permanent employment. This is the intent of CDBG funds for loans to for-profit businesses. The parameters of how the money can be spent are included in this section.

1. Financial Feasibility Evaluation

Before funds may be committed to any business, the grantee must provide documentation to show that a thorough financial AND feasibility analysis are completed for the proposed project and for the company itself prior to receiving the assistance. The evaluation must be done in accordance with the HUD “Economic Development Guidelines”, (January 5, 1995 Federal Register). Copies of the “Standard Financial Review” form (April 1995) are available on request from the state of Utah; Division of Housing & Community Development. Copies will be made available to all grantees administering revolving loan programs in this program year.

The “appropriate” review will consist of an evaluation of the reasonableness of project costs. There must be a determination that there are definite commitments of other funds in the project. An analysis must be made to show that CDBG funds have not been substituted for other available non-governmental funds. This part of the review must evaluate the financial condition of the company in terms of industry standards, rates of return on equity, and level of risk. The feasibility of the project to succeed must be evaluated. It is inappropriate to provide assistance to a project which is unlikely to be successful regardless of the amount of assistance. The financing terms must be evaluated as well as the public benefit. Documentation is the key. Every decision must be substantiated with documentation to show, specifically, how the grantee has decided to establish the terms of the loan or to even make the loan originally, compared to industry standard sand financial feasibility. Loans to micro-enterprises or businesses with less than five employees, including the owner, are not required to meet the entirety of this proforma requirement. A separate and distinct Micro-Enterprise Loan Program must be established by the grantee in order to take advantage of these exclusions. All businesses must prepare a 2-3 year proforma. These businesses should prepare a two to three-year performance plan and the conditions of the loan should be based on the ability of the company to pay or, in other words there should be enough profit, after taxes, to pay for the debt retirement. The public benefit of the loan should be thoroughly explained.

2. <u>Job Creation Goals and Accountability</u>

The company receiving public assistance must understand National Objective compliance. The company receiving public assistance must make 51 percent of all jobs created available to low and moderate-income persons. The company must realistically estimate how many jobs will result from its project and that figure should be committed to in the agreement between the company and the grantee. Since this is mandatory, it is necessary that the grantee and the state track the progress of the company in accomplishing this goal. Such monitoring efforts must be maintained, even if it takes several years. It must be finally determined that the expenditure of these public funds met a national objective and that a public purpose was accomplished. The recipient must verify that it made jobs available in accordance with the following program guidelines.

The verification of job availability can be accomplished in one of two ways. The first method is to document that the skill level and pay for the jobs are consistent with LMI characteristics and indicate how many jobs are actually created. The grantee must also document what the recipient does to advertise job availability. A second way is to actually determine and document the income of the persons before they receive the new job to show that they were LMI at the time of hiring. A state approved income certification form must be used and must be signed by the LMI person filling it out.

If a recipient can document that adequate efforts have been made to make jobs available and that insufficient, number of LMI persons applied to meet the intended goal, then relaxation of the job creation goal may be negotiated.

3. <u>Business Failures</u>

The state will base evaluation of national objective and contractual compliance on "good faith efforts." This is defined as a sincere effort by the grantee and the recipient to make the business successful and create jobs. If, for various reasons, this does not occur, the grantee should document exactly what was done by both parties to make the business succeed and the recipient should record all efforts in making the business fulfill job creation expectations. The state will then make a determination as to whether a good faith effort transpired. If not, restitution will be necessary.

In such cases, restitution will be based on the percentage of jobs created to the dollar value of the award, i.e., if only 50 percent of targeted jobs were produced, the loan recipient will restore 50 percent of the funds awarded. If an obligated business does not hire LMI persons and discontinues operation, the grantee is expected to act to recover any funds available, which result from security agreements held by the grantee. If fraud, waste or mismanagement is the primary reasons for business failure, separate steps, including legal measures, will be taken to restore funds to the federal government.

4. Portfolio Management Guidelines

All grantees operating revolving loan fund programs will be required to close loans and manage their portfolio of loans in accordance with the adopted "Portfolio Management Guidelines." Copies of these guidelines can be obtained from HCD. The guidelines address loan processing and specifically identify all of the items, which must be done at the time of closing of a loan. It also deals with monitoring of grantees, reporting requirements, financial record keeping and collection policies. Compliance with these guidelines will be reviewed during grantee monitoring by the state and through the periodic reporting which is specified in the guidelines.

G. INFRASTRUCTURE FOR ECONOMIC DEVELOPMENT

An applicant may apply for a project with the intent of constructing infrastructure which will support the siting of a business or businesses that commit, up-front, to create jobs primarily for low or moderate-income persons. This qualifies under the LMI national objective on the basis that at least 51 percent of the jobs created by the companies who locate within the project site will be taken by persons, who at the time of hire have low or moderate incomes.

In order for an applicant to qualify for this kind of project it is mandatory that the community or county making application has received a commitment from a company or companies, to locate in the development and that they will be capable of creating jobs for which LMI persons will qualify, or that training will be made available to LMI persons so that they will qualify for the jobs created. Prior to the award of the grant, the applicant must obtain a signed legal commitment from the company or companies expecting to locate within the business development site to:

1. **Utilize the infrastructure when built, and**
2. **Fill 51 percent of all jobs created with low or moderate-income persons.**

All other program requirements apply to these projects including environmental, Davis/Bacon, financial management, procurement, etc. The grantee will be responsible for monitoring the company’s compliance with program requirements, including job creation. Income certifications or other like documentation is required by the state for all jobs created in order to verify that a majority of the jobs created meet the income limitations at the time of hire. The grantee will, of course, be ensuring that the company meets its committed obligations throughout the development of the project.